No. 25-1088

IN THE

Supreme Court of the United States

ULYSSES LEE FEAGIN,

Petitioner,

v.

MANSFIELD POLICE DEPARTMENT; JORDAN MOORE; MARK BOGGS; CLAY BLAIR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Respondents' opposition tries to salvage the Sixth Circuit's decision below by redefining the party-presentation principle and rewriting their appellate brief. Their arguments are unavailing. Respondents never argued to the Sixth Circuit (and indeed do not even argue to this Court) that the district court's findings at summary judgment were so "blatantly contradicted" by video evidence "that no reasonable jury could" find for Mr. Feagin. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007). And the Sixth Circuit lacked jurisdiction to consider the issue Respondents did raise: that the non-video evidence in the record, including police officer affidavits and police reports, created a genuine dispute of material fact as to whether Mr. Feagin was resisting arrest at the time he was tased.

Summary reversal is appropriate here because this case involves an even more egregious party-presentation violation than those this Court addressed in *Clark v. Sweeney*, 607 U.S. 7 (2025) and *United States v. Sineneng-Smith*, 590 U.S. 371 (2020). In those cases, as here, the lower courts decided issues the parties did not raise. Here, however, Sixth Circuit went further: It did not just distort the factual record and interpret this Court's decision in *Barnes v. Felix*, 605 U.S. 73 (2025) to overturn decades of settled precedent on taser use—all without adversarial briefing. It also fundamentally reshaped the appeal to compensate for Respondents' jurisdictionally barred challenge, disregarding the jurisdictional limits Congress placed on interlocutory qualified-immunity appeals.

Respondents offer two defenses of the Sixth Circuit's takeover of this case, neither of which withstands scrutiny. First, Respondents contend that because they raised "qualified immunity" as a defense, the Sixth Circuit was free to reverse the district court on whatever legal theory about qualified immunity it chose. But that is not the law. Both *Sineneng-Smith* and *Clark* make clear that it violates the principle of party presentation for an appellate court to disregard the issue a party raises about a particular doctrine (there, the First and Sixth Amendments, respectively) and instead decide an entirely different question about that same doctrine. The principle of party presentation should apply with even more force where, as here, a court of appeals lacks jurisdiction over the challenge a party *did* bring.

Second, Respondents engage in revisionism about their briefing below, claiming that they urged the Sixth Circuit to decide the appeal based on video evidence. But Respondents cannot rewrite the record now. The brief in opposition cites the one time Respondents' opening brief referred, in passing, to the video evidence. BIO 4-6. But Respondents never raised any issue or made any argument based on the video. Indeed, not only did they fail to designate the video evidence as relevant under applicable Sixth Circuit rules or provide it to the Sixth Circuit for review, but they also asked the Sixth Circuit *not* to rely on the video evidence, characterizing it as contradicting the officers' version of events.

Summary reversal is appropriate here. If this Court does not intervene to correct a decision that egregiously violated the party-presentation principle

by disregarding limits on appellate jurisdiction, distorting the record, and rewriting settled law, it will send a message to lower courts that they can take over an appeal without consequence.

I. The Sixth Circuit's Violation Of The Party-Presentation Principle Warrants Summary Reversal.

Mr. Feagin's petition explained how the Sixth Circuit "radical[ly] transform[ed]" this case. *Sinenenng-Smith*, 590 U.S. at 380. The sole issue Respondents raised with respect to qualified immunity, both in the district court and on appeal before the Sixth Circuit, was that they were entitled to summary judgment because Mr. Feagin was actively resisting arrest. Pet. 11-13. The Sixth Circuit did not have jurisdiction over Respondents' challenge to the district court's resolution of that issue, which Respondents did not ground in the video evidence here but instead on the police officers' affidavits and police reports. Pet. 11-13. So the Sixth Circuit injected new legal issues into the case and reversed the district court. Pet. 14-16.

A. The Party-Presentation Principle Is Implicated Here.

Respondents defend the Sixth Circuit's transformation of this case first by asserting that qualified immunity was "raised from the inception of the suit" and "fully briefed" below. BIO 1, 8. But that is neither here nor there. The petition does not argue that Respondents failed to raise qualified immunity *at all*—it argues that they failed to advance, and even affirmatively disavowed, the only qualified-immunity issue

the Sixth Circuit would have had jurisdiction to consider. *See* Pet. i. The fact that Respondents raised a *different* immunity issue below does not grant the Sixth Circuit carte blanche to reverse the district court on any aspect of qualified-immunity doctrine it wishes, whether or not presented by the parties.

Sineneng-Smith illustrates the point. There, the respondent raised a specific First Amendment challenge before both the district court and the Ninth Circuit. 590 U.S. at 374, 377-78. The Ninth Circuit, however, injected a *different* First Amendment issue into the case. *Id.* at 374-75, 378-79. This Court reversed the Ninth Circuit's "radical transformation of th[e] case" as an impermissible judicial "takeover of the appeal," notwithstanding that the arguments made by the parties and ultimately adopted by the Ninth Circuit both implicated the "First Amendment" writ large. *Id.* at 379-80.

Similarly, in *Clark v. Sweeney*, this Court summarily reversed because the Fourth Circuit granted relief on a particular Sixth Amendment issue the respondent "never asserted." 607 U.S. at 9. There, the question "before the court," BIO 7, was defense counsel's alleged ineffective assistance, in violation of the Sixth Amendment, "for failing to investigate whether other jurors had been prejudiced by [one juror's] crime-scene visit." 607 U.S. at 9. The Fourth Circuit, however, reversed on the broader theory that a "confluence of extraordinary failings from juror, to judge, to attorney" violated the respondent's Sixth Amendment rights. *Sweeney v. Graham*, No. 22-6513, 2025 WL 800452, at *19-20 (4th Cir. Mar. 13, 2025). This Court summarily reversed, holding that the Fourth

Circuit's decision on a completely different Sixth Amendment issue than that raised by respondent took over and "radical[ly] transform[ed]" the nature of the claim. *Clark*, 607 U.S. at 10 (quoting *Sinenenq-Smith*, 590 U.S. at 380).

The same judicial backfilling happened here. As detailed in the petition (at 14-16) and *infra* (at 7-9), Respondents advanced one qualified-immunity issue below, but the Sixth Circuit reversed the district court on entirely different grounds. That violation of the party-presentation principle is especially problematic because the issue Respondents raised was jurisdictionally barred, and the Sixth Circuit injected additional new issues into the case to circumvent that bar. Pet. 11-13, 24; *infra* 7-9. Respondents do not cite any case in which any court has ever held that courts may exceed their jurisdictional limits by inventing legal issues the parties did not raise.

Instead, Respondents cite cases articulating the uncontroversial but irrelevant principle that when parties raise a legal issue, a court is not bound by the competing all-or-nothing resolutions of that legal issue urged by the parties. *See* BIO 7 (quoting *United States v. Hohn*, 123 F.4th 1084 (10th Cir. 2024)). For example, if a plaintiff argues that a statute says X, and a defendant argues that a statute says Y, the court can hold that, actually, the statute says Z. That was essentially the situation in *Hohn*. *See* BIO 7. There, the parties raised the legal question of what, if any, presumption of prejudice should apply to a defendant's challenge to his criminal conviction when the prosecution intentionally intruded into his protected attorney-client communications. *Hohn*, 123

F.4th at 1119. Somewhat strangely, Respondents cite the *dissent* from *Hohn*, which urged the adoption of a rebuttable presumption of prejudice—even though the defendant challenging his conviction did not argue for precisely that presumption. *Id.* at 1129-30 (Bacharach, J., dissenting). The dissent explained that "when an issue or claim is properly before the court," the court "need not adopt either party's position when [it] conclude[s] that an appellant is entitled to some, but not all, of the requested relief." *Id.* & n.7 (internal quotation marks omitted). The other cases Respondents cite in their brief in opposition (at 7-8), which are taken from a footnote in the *Hohn* dissent, simply repeat this same principle: When parties properly raise a *legal issue*, the court is not bound to track either party's position in resolving it.[1]

But Respondents did not raise a legal issue for the Sixth Circuit's consideration *at all*. Respondents raised a jurisdictionally barred factual issue about the evidence in the record. *See infra* 7-9. The Sixth Circuit then radically transformed the appeal into one it could decide by raising its own legal issues *sua*

[1] Respondents' only other citation is to another Tenth Circuit case in which a rule of substantive criminal law allows district courts to enter a judgment on lesser-included offenses after deciding that the evidence presented at trial was legally insufficient as to a specific element of a greater offense. *See United States v. Cortez-Nieto*, 43 F.4th 1034, 1049-52 (10th Cir. 2022); BIO 8. But that specific rule of criminal law about the relationship between greater and lesser-included offenses has nothing to do with this case.

sponte. *See* Pet. 11-24. In sum, none of the cases Respondents cite condone the Sixth Circuit's overreach.

B. The Sixth Circuit Compounded Its Party-Presentation Error By Disregarding Its Jurisdictional Limits.

The Sixth Circuit's party-presentation violation is particularly inexcusable in this case because it resulted in the court circumventing limits on its interlocutory appellate jurisdiction. *See* Pet. 11-13. Respondents counter that the court did have jurisdiction over the appeal (and that there was no violation of the party-presentation principle) because Respondents rooted their evidence-sufficiency challenge to the district court's qualified-immunity finding in the video evidence. BIO 4-7. But as explained in the petition and previewed above, Respondents did no such thing. Rather than arguing the district court's findings were "blatantly contradicted" by available video evidence, *Scott*, 550 U.S. at 380-81, *see* Pet. 13, Respondents instead argued that *non-video evidence* supported their factual argument that Mr. Feagin was resisting arrest, Pet. 11-13.

Respondents attempt to get around this problem by rewriting the record. But the record speaks for itself. Start with what Respondents did—and did not do—in the Sixth Circuit. Respondents did not designate the video as relevant under Sixth Circuit Rule 30(g)(1)(A). Pet. 13; C.A. Response Br. 29. They did not provide the video to the Sixth Circuit for review. Pet. 13. They mentioned the video in their opening brief exactly once, in passing, alongside other evidence in the record. C.A. Opening Br. 10; BIO 4. They

never asked the Sixth Circuit to find the district court's findings were "blatantly contradicted" by the video. *Scott*, 550 U.S. at 380-81. And even after Mr. Feagin's response brief explained why the Sixth Circuit lacked jurisdiction, Respondents doubled down and asked the Sixth Circuit *not* to rely on the video and instead credit the officers' competing testimony. *See* C.A. Reply 1-4 (arguing video "should not be given disproportionate value" in the "balancing act" of weighing evidence when "there is video versus the police officer's recitation of facts").

Even now, Respondents *still* do not appreciate the jurisdictional problem in this case. Respondents say that they "merely" asked the Sixth Circuit to review what they call the "totality of the evidence" in the record, including non-video evidence, to determine whether Mr. Feagin was actively resisting arrest. BIO 5-6. But that is precisely what this Court held in *Johnson v. Jones* that appellate courts may not do. *See* 515 U.S. 304, 313 (1995); Pet. App. 40a (Clay, J., dissenting) ("Defendants' arguments defeat our jurisdiction because they reflect a challenge to the district court's determinations about genuine disputes of fact.").

Instead of dismissing the appeal for lack of jurisdiction, however, the Sixth Circuit "radical[ly] transform[ed]" Respondents' qualified-immunity appeal from a fact-based challenge to a legal one that did not suffer from the same jurisdictional bar—but was never made by Respondents. *Clark*, 607 U.S. at 10; Pet. 11-13, 20-24. In this way, the Sixth Circuit's violation of the party-presentation principle is *worse* than the Fourth Circuit's violation in *Clark*. Not only

did the Sixth Circuit overstep its role as "neutral arbiter of matters the parties present," but it did so to effectuate an end-run around its jurisdictional limits. *Clark*, 607 U.S. at 9 (quoting *Sineneng-Smith*, 590 U.S. at 375).

When the only challenge a party advances is one the court lacks jurisdiction to decide, the only proper response is to dismiss the appeal for lack of jurisdiction—not to invent new issues on the party's behalf. The Sixth Circuit's failure to do so warrants this Court's correction.

C. The Sixth Circuit's Errors Of Law And Fact Due To The Lack Of Adversarial Briefing Prejudiced Mr. Feagin And Reinforce The Need For Summary Reversal.

The brief in opposition all but fails to respond to Mr. Feagin's point that, without the benefit of adversarial briefing on the issues it introduced to the appeal, the Sixth Circuit made grave errors that prejudiced Mr. Feagin. Pet. 17-24.

Start with the Sixth Circuit's reading of this Court's decision in *Barnes v. Felix* to upend decades of settled law on taser use. Pet. 20-24; Pet. App. 23a ("We may not make [whether Mr. Feagin was resisting arrest when he was tased] our sole concern, as we might have done in days gone by." (citing *Barnes*, 605 U.S. at 80-81)). That is a sea change from the previously uniform rule, in the Sixth Circuit and elsewhere, that "when a suspect does not resist, or has

stopped resisting," it is unlawful to tase him. *Rudlaff v. Gillispie*, 791 F.3d 638, 642 (6th Cir. 2015); Pet. 21.

In response to all this, Respondents contend that *Barnes* merely "reenforc[ed]" the "totality of the circumstances" test set out in cases like *Graham v. Connor*, 490 U.S. 386 (1989). *See* BIO 9. We agree—which is precisely why the Sixth Circuit was wrong to invoke *Barnes* more than a dozen times as justification for upending decades of settled law uniformly holding that tasing a non-resisting suspect constitutes excessive force. Pet. 21-22.

Perhaps even more striking is Respondents' lack of response to the Sixth Circuit's egregious factual errors—and, indeed, inventions. Pet. 17-20. Respondents do not dispute that the Sixth Circuit relied on extra-record "facts" from its own independent research into Mr. Feagin's state-court criminal proceedings in its opinion. Pet. 17-18. Respondents also do not deny that the Sixth Circuit treated genuinely disputed facts as undisputed—including by crediting an unsworn, stricken affidavit to find critical, disputed facts in Respondents' favor. Pet. 17-19. And Respondents do not contest that the Sixth Circuit gravely mischaracterized the video evidence by describing Mr. Feagin's arm as "free and flailing" at the moment he was tased when the video shows nothing of the sort. Pet. 20.

These errors are not incidental. Each one resulted from the Sixth Circuit's herculean effort to rebuild Respondents' appeal from the ground up and resolve qualified immunity in Respondents' favor. As Judge Clay recognized in dissent, the Sixth Circuit majority

"misrepresent[ed]" the facts "by overstating the events depicted in the video," and "reach[ed] outside of the video and distort[ed] facts in [Respondents'] favor in order to grant qualified immunity." Pet. App. 42a (Clay, J., dissenting). Respondents' silence in response to these points is their most telling concession, because they cannot defend the factual assumptions on which the Sixth Circuit's decision rests.

D. This Case Is An Ideal Vehicle For Reminding Courts To Adhere To The Party-Presentation Principle And Respect Jurisdictional Limits.

In a last-ditch effort to avoid summary reversal, Respondents suggest that this case is not the right "vehicle" for addressing "open questions, academic or otherwise, concerning the foundation and breadth of the party-presentation principle." BIO 9-10. This case presents no such "open questions." What it does present is a clear-cut violation of the party-presentation principle where an appellate court "radical[ly] transform[ed]" the nature of a party's challenge in order to reach and decide legal questions nobody presented. *Clark*, 607 U.S. at 10 (quoting *Sineneng-Smith*, 590 U.S. at 380). Summary reversal is therefore warranted.

In any event, this case is an entirely appropriate vehicle for reminding courts that they "are essentially passive instruments of government" who should not "sally forth each day looking for wrongs to right." *Sineneng-Smith*, 590 U.S. at 376 (internal quotation marks omitted). Because in this case, not only did the Sixth Circuit violate the party-presentation principle

and distort both the law and the facts—but it did so in violation of jurisdictional limits.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment of the Sixth Circuit summarily reversed.

Respectfully submitted,

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